In the Supreme Court of the United States

OCTOBER TERM, 1964.

No. 20.

WALTER C. BRULOTTE and CECELIA BRULOTTE, his wife,
and
RAYMOND CHARVET and BLANCHE CHARVET, his wife,
Petitioners,

v.

THYS COMPANY,
Respondent.

REPLY OF WELL SURVEYS, INC. (AND DRESSER INDUSTRIES, INC.) TO MEMORANDUM OF PETITIONERS IN OPPOSITION TO THEIR MOTION FOR LEAVE TO FILE AS AMICUS CURIAE.

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Petitioners argue in their Memorandum in Opposition that our Motion for Leave to File and our *amicus curiae* Brief, were untimely.

The fact is that our Motion and Brief were filed 12 days before the Brief of Respondent which our Brief generally supports.

Petitioners apparently served their Brief on August 5, 1964, but for some reason did not file it until August 17th. When we telephoned the Clerk's office to ascertain the date when Respondent's Brief was due, so that we could have our Motion and Brief on file by the same date, the Clerk's office naturally believed that Petitioners' Brief had been served about the time it was filed, and told us that Respondent's Brief was expected September 16th. We filed our Motion and Brief on September 16th, and Respondent's Brief was actually filed on September 28th.

We submit that our Motion and Brief were timely, and that in any event no one has been prejudiced by its filing date.

So far as Petitioners' other points are concerned, we are content to let our Motion and Brief speak for themselves, except that we wish to add one point. We have now seen Respondent's Brief, and think it is a good one. We believe, however, that the following points are more adequately treated in our proposed *amicus* Brief:

1. The significance of *voluntary* adoption by the parties of a broad royalty base, including some operations which are not patented, or on which the patent has expired.

2. The importance from the standpoint of accounting convenience of permitting parties to use such a royalty base, provided they do so voluntarily.

3. The basic distinction between the *Shatterproof*, *Ar-Tik* and similar cases and the instant case.

4. The point that there is no significant difference between inclusion in the royalty base of operations on which the patent has expired, and inclusion therein of operations which have never been patented—both being equally in the public domain.

We submit that our Motion should be granted and our Brief accepted for filing.

Respectfully submitted,

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